



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>3347 of 2022</b>
<b>Date of filing:</b>	<b>14.02.2023</b>
<b>Date of first hearing:</b>	<b>26.04.2023</b>
<b>Date of decision:</b>	<b>08.05.2025</b>

Kusum Devi W/o Sh. Vinod Kumar  
R/o House No. 198, Shiva Ji Gali,  
D.N.College road, Hisar-125001  
Haryana

....COMPLAINANT(S)

VERSUS

Aarcity Builders Pvt Ltd  
552, 5<sup>th</sup> floor, Terrace Tower-B, D-4, 5, 6 Krishna  
Apra Business Square, Netaji Subhash Place  
District Centre, Pitampura  
New Delhi- 110034

....RESPONDENT(S)

<b>Complaint no.:</b>	<b>3348 of 2022</b>
<b>Date of filing:</b>	<b>14.02.2023</b>
<b>Date of first hearing:</b>	<b>26.04.2023</b>
<b>Date of decision:</b>	<b>08.05.2025</b>

Nitin Bansal S/o Sh. Kamlesh Bansal  
R/o House No. 22, Priti Nagar  
Hisar-125001 Haryana

....COMPLAINANT(S)

VERSUS

Aarcity Builders Pvt Ltd  
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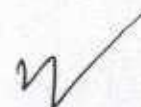
....RESPONDENT(S)

<b>CORAM:</b>	<b>Parneet Singh Sachdev</b>	<b>Chairman</b>
	<b>Nadim Akhtar</b>	<b>Member</b>
	<b>Chander Shekhar</b>	<b>Member</b>

**Present: -** Mr. Rose Gupta, Counsel for the complainants through VC in all cases.  
Mr. Neeraj Goel & Mr. Tarun Ranga, Counsel for the respondent in all cases.

**ORDER (PARNEET S. SACHDEV-CHAIRMAN)**

1. Captioned complaints are taken up together for hearing as they involves same issues pertaining to same project-'Aarcity Regency Park, Hisar' and against one respondent only. This order is passed taking complaint no. 3347/2022-Kusum Devi vs Aarcity Builders Pvt Ltd as lead case.
2. Present complaint was filed on 14.02.2023 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations,





responsibilities and functions towards the allottee as per the terms agreed between them.

#### A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

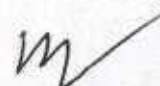
S.No.	Particulars	Details of complaint no. 3347/2022	Details of complaint no. 3348/2022
1.	Name of the project	Aarcity Regency Park, Hisar	Aarcity Regency Park, Hisar
2.	RERA registered/not registered	Registered.	Registered.
3.	DTCPL License no.	295 of 2017 dated 13.10.2017	295 of 2017 dated 13.10.2017
	Licensed area	8.181 acres	8.181 acres
4.	Unit no.	503, Tower-E	804, Tower-A
5.	Unit area	2094 sq. ft.	1272 sq. ft.
6.	Date of booking	08.09.2011	04.01.2012
7.	Date of builder buyer agreement	20.02.2014	13.08.2012
8.	Due date of offer of	20.05.2017	13.11.2015

	possession (36+3 months)		
9.	Possession clause	<p>Clause 18</p> <p>The Developer Company shall endeavor to give possession of the Unit to the Allottee(s) within a period of 36 months from the date of execution of Allotment Letter with a further grace period of 90 (ninety) days subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, non-availability of scarcity of steel and/or cement and/or other general building materials and/or water supply and/or electric power or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the Developer Company, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part/full completion (occupancy) certificate by the Government and/or any other public or competent</p>	<p>Clause 18</p> <p>Same as of 3347/2022</p>





		<p>authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer Company and subject to receipt of complete dues and other charges as per installment plan opted by the Allottee(s). The Allottee(s) shall not be entitled to any compensation on the grounds of delay in possession due to reasons beyond the control of the Developer Company. The Developer Company on completion of the development/construction shall issue final call notice (offer of possession) to the Allottee (s), who shall within 30 days thereof, remit all dues and take possession of Unit after registration of sale deed. The date mentioned on the final call notice shall be deemed to be the date of offer of possession.</p>	
10.	Basic sale consideration	₹ 42,92,700/-	₹ 25,03,296/-
11.	Amount paid by complainant	₹ 27,56,027/-	₹ 20,53,864/-
12.	Offer of possession	Not made	Not made
13.	Date of	Not yet received.	Not yet received.



	Occupation Certificate		
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## B. FACTS OF THE COMPLAINT

4. Facts of complaint are that complainant had booked a flat in the project- Regency Park, Hisar of the respondent by paying Rs 4,50,000/- on 08.09.2011. Thereafter, Builder buyer agreement was executed between the parties on 20.02.2014 for unit no. E-503, having area of 2094 sq. ft. and as per clause 18 of it, the possession of unit was supposed to be delivered upto 20.05.2017. In total, complainant had paid an amount of Rs 27,56,027/- against total sale consideration of Rs 56,12,050/-. Copy of agreement is annexed as Annexure C-1.
5. That the complainant visited the project on various occasions and also visited the office of respondents for handing over the possession of the flat in question but till date the possession of the flat in question has not been handed over to the complainant despite the fact that same was to be handed over on or before 19.05.2017 and therefore the respondent be directed to handover the possession of the flat in question after completing the same in all aspect.
6. That despite booking of apartment in the above mentioned project in the year 2011, the apartment in question has not been handed over by the respondent till date. That already more than 12 years have elapsed





from the date of booking but the project is not yet complete and there is even no possibility of it being completed in the near future.

7. That the complainant has made substantial investment in the apartment booked in the project which stands jeopardized by the actions of the respondent. Respondent did not honour commitments towards the complainant. It is evident that respondent is trying to siphon off the hard earned money of the complainant. Hence, the present complaint.

### **C. RELIEF SOUGHT**

8. Complainant in his complaint has sought following relief:
  - i. Allow the present complaint.
  - ii. Direct the respondent to deliver actual and physical possession of the apartment no. 503, 5<sup>TH</sup> floor of Tower-E, measuring built up area of 2094 sq. ft situated at Regency Park, Village Satrod Khurd, Sector-11-A and 17, Hisar, Tehsil and District Hisar developed by the respondent, as was duly allotted in favor of the complainant alongwith all facilities and amenities as agreed to between the complainant and the respondent at time of making allotment, alongwith all necessary rights to carry out amendment/renovation etc. in the said apartment and further direct the respondent to pay interest at 18% p.a. on the deposited amount of Rs 27,56,027/- from the date of deposits till its actual realization.



- iii. Direct inquiry (forensic audit) in relation to the affairs of the respondent.
- iv. Direct the respondent to grant compensation of Rs 1,00,000/- towards litigation cost.
- v. Revoke registration of the respondent under Section 5 of the RERA Act; which has otherwise also expired.
- vi. Pass any other orders in the interest of justice.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 20.11.2023 pleading therein:

- 9. That the complainant entered into an agreement with respondent on 20.02.2014 for allotment of apartment no. 503, Tower-E in the 'Regency Park Hisar' located at Sector 11A and 17 Delhi Hisar road, Hisar. As per terms and conditions no. 18 of agreement, the proposed possession date was fixed between the parties somewhere around May, 2017, subject to timely payments and force major condition which were beyond the control of the respondent-promoter.
- 10. That the complainant allottee was a defaulter and failed to make timely payments as per the terms of the FBA. Despite repeated reminders, the complainant did not make the agreed installments





payments. The complainant-allottee was defaulted to make the payments as per agreed plan.

11. That the real estate project suffered on account of non-payment of dues of instalment by the complainant allottee and it delayed the development process for other allottees. Possession and construction has delayed due to reasons like-availability of material, labours, manpower, government department approvals, authority orders to ban the further sale and withdrawal of funds which were beyond the control of the respondent. Apart from these reasons and hurdles the whole world including respondent-promoter has faced international emergency COVID-19.
12. That it is the admitted position that the unit in question and concerned block construction has delayed due to the above mentioned reasons which were beyond the control of the respondent. Even though the respondent has given a shifting offer for early possession unit to the complainant. Copy of early possession unit offer email dated 01.07.2023 is attached herewith as Annexure R-1.
13. That the total price of the unit is Rs 48,79,150/- excluding EDC/IDC. However, it is a matter of record that the complainant till date has made the payment of Rs 2756027/- towards the basic sale price of the flat and did not pay any EDC/IDC of Rs 732900/-. Copy of account ledger is attached herewith and marked as Annexure R-2.



**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS  
AND RESPONDENT**

14. During oral arguments learned counsel for the complainant insisted upon possession of booked flat alongwith delay interest stating that complainant wants to stay with the project and is interested only in possession of booked flat. He further stated that respondent till date has not offered possession of unit so monthly interest be awarded to the complainant. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that construction of the project is going on at good pace and fit out offer of possession will be offered as soon as the construction stands completed.

**F. ISSUES FOR ADJUDICATION**

15. Whether the complainant is entitled to possession of booked unit alongwith delay interest in terms of Section 18 of Act of 2016?

**G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

16. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

- (i) Admittedly, complainant in this case had purchased the allotment rights qua the flat in question in the project of the respondent in the year 2011 against which an amount of





₹ 27,56,027/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 4,60,183/- was made to respondent on 04.07.2014 by the complainant which implies that respondent is in receipt of total paid amount since year 2014 whereas fact remains that no valid offer of possession of the unit in question has been made till date.

(ii) In the written statement submitted by the respondent, construction of the project got delayed due to force majeure conditions. Authority in order to ascertain the exact status of unit involved passed a detailed order dated 24.10.2024 which is as follows:

*"On the last date of hearing, i.e 30.05.2024, following order was passed:-*

*"Ld. Counsel for complainant stated that complainants in captioned complaints are seeking relief of possession and delay interest of booked units. However, respondent is ready to offer the alternate units as booked units are not yet constructed/completed at site.*

*Today, no one has put in appearance on behalf of respondent. Nor the reply filed by the respondent details out the exact status of construction of booked units at site. Fact remains that respondent has offered alternate units to complainants since booked units are not yet complete.*

*In these circumstances, the complainants are asked to verify the latest stage of construction of towers-E and A in which their units are located so that it can be ascertained as to whether units are near completion or not. Said documents be filed within next 3 weeks with advance copy supplied to respondent.*





*Perusal of complaint file 3348/2022 reveals that complainant claims to have paid an amount of Rs 20,53,864/- whereas respondent in ledger attached in reply states that Rs 25,05,424/- has been paid. Complainant is directed to clarify the issue of paid amount on next date of hearing.*

*Cases are adjourned to 24.10.2024 for arguments."*

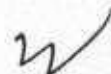
*Today, ld. counsel for complainant stated that in complaint no. 3348/2022, actual paid amount is Rs 20,53,864/- only. Amount over and above mentioned by respondent in its applicant ledger as credit compensation which has not been paid by complainant.*

*Mr. Jai Kishan, informed that arguing counsel Adv. Tarun Ranga is not well so he need time to argue the cases. His request is accepted.*

*Respondent is directed to place on record the exact status of construction of units of complainants so that it can be ascertained whether possession is even possible in near future or not. Said status be placed within next 3 weeks with advance copy supplied to complainants.*

*Cases are adjourned to 06.02.2025 for arguments."*

(iii) Respondent in compliance of order dated 24.10.2024 filed a status report in registry on 04.02.2025 wherein it has been submitted that Unit no. 503, tower-E (complaint no. 3347/2022)-Tower-E comprises of 13 floors and construction as on date has reached upto 6<sup>th</sup> floor. For Unit no. 804, tower-A (complaint no. 3348/2022), Tower-A comprises of Ground+ 13





floors and construction as on date has reached upto 8<sup>th</sup> floor.

Photographs in support has been attached with status report.

(iv) Aforesaid report clearly establish the fact the construction is going on at slow pace and no fixed timeline has been promised by the respondent towards completion of involved towers. Further, it is relevant to refer clause 18 of builder buyer agreement pertaining to deemed date of possession which is as under:-

*"Clause 18*

*The Developer Company shall endeavor to give possession of the Unit to the Allottee(s) within a period of 36 months from the date of execution of Allotment Letter with a further grace period of 90 (ninety) days subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, non-availability of scarcity of steel and/or cement and/or other general building materials and/or water supply and/or electric power or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the Developer Company, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part/full completion (occupancy) certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer Company and subject to receipt of complete dues and other charges as per installment plan opted by the Allottee(s). The Allottee(s) shall not be entitled to any compensation on the grounds of delay in possession due to reasons beyond the control of the Developer Company. The*





*Developer Company on completion of the development/construction shall issue final call notice (offer of possession) to the Allottee (s), who shall within 30 days thereof, remit all dues and take possession of Unit after registration of sale deed. The date mentioned on the final call notice shall be deemed to be the date of offer of possession."*

Aforesaid clause includes time period of 90 days as 'grace period' covering force majeure conditions. Complainant has also accepted said grace time period towards deemed date of possession. Moreover, it is an admitted fact that complainant bought the unit under construction linked plan but respondent herein failed to establish on record that the amount received is in consonance with stage of construction and respondent is going on as per schedule. No documentary evidence has been placed on record by respondent proving that force majeure conditions diluted the timeline of deemed date of possession. Fact is that deemed date of possession as per clause 18 of agreement is 20.05.2017, whereas respondent till date has reached upto 6<sup>th</sup> floor only out of total 13<sup>th</sup> floor tower. After duly considering grace period of 90 days as force majeure towards deemed date of possession, it is not appropriate to extend the deemed date of possession any further. Hence, no other period except 90 days grace period is being allowed to respondent.





(v.s) As discussed in aforesaid paragraph, the respondent was obligated to deliver possession latest by 20.05.2017 but respondent failed to do so and even today, respondent is not in a position to deliver possession to the complainant as construction work is still going on at site. In the present complaint, the complainant intends to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

*"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*

*.....*  
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".*

(vi.) The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.-For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*



*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

(vii.) Complainant herein is claiming delay interest at the rate of 18%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(viii.) Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 08.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(ix.) Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest*



*marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

17. The Authority observes that the deemed date of possession in terms of builder buyer agreement is 20.07.2015. The respondent has not offered valid offer of possession of unit till date. Complainant himself is also interested in getting the possession of the booked unit. He does not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the unit the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 20.07.2015 to the date on which a valid offer is sent to him duly supported with occupation certificate.

18. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% till in both complaints as per detail given in the tables below:

**Complaint no. 3347/2022**

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 08.05.2025
1.	₹ 2756027/-	20.07.2015	2439809/-
	Total = ₹ 27,56,027/-		₹ 24,39,809/-
2.	Monthly interest		₹ 25,144/-

**Complaint no. 3348/2022-** Respondent in its ledger account admits payment of Rs 25,05,424/- whereas complainant claims to have paid an amount of Rs 20,53,864/-. So, vide order dated 30.05.2024 complainant was directed to clarify the issue of paid amount. Complainant during course of hearing dated 24.10.2024 clarified that actual paid amount is Rs 20,53,864/- only. Amount over and above mentioned by respondent in its applicant ledger as credit compensation which has not been paid by complainant. Receipts of total paid amount is annexed at page no. 37-41 of complaint file. So, final amount taken for calculation of delay interest is Rs 20,53,864/-.

**Complaint no. 3348/2022**

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 08.05.2025
1.	₹ 2053864/-	13.11.2015	21,64,238/-





	Total = ₹ 20,53,864/-		₹ 21,64,238/-
2.	Monthly interest		₹ 18,738/-

19. Accordingly, the respondent is liable to pay the upfront delay interest alongwith monthly interest as described in the aforesaid tables to the complainant. Said amount shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

20. Ld. counsel for complainant has neither argued nor pressed upon the reliefs claimed in clause iii. And v. of the relief sought.

21. Complainant had filed an application in registry on 19.03.2025 for release of demand draft no. 012853 dated 17.11.2023 amounting to Rs 2,000/- deposited by the respondent in pursuance of order dated 08.08.2023 in complaint no. 3347/2022. It has been requested that respondent be asked to revalidate the same and the same be released in favor of Sh. Deepak Chauhan Clear to undersigned. Similar application has been filed in complaint no. 3348/2022-demand draft no. 012852 dated 17.11.2023 amounting to Rs 2,000/-. In this regard, it is relevant to refer order dated 22.11.2023 whereby details of aforesaid demand drafts alongwith submission of replies by respondent in registry on 20.11.2023 has been mentioned. Since that day, i.e. 22.11.2023, complainant is aware that

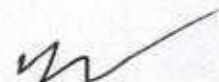


demand drafts have been deposited by the respondent. However, complainant did not collect the same till date. Now, aforesaid application to revalidate the demand draft has been filed by the complainant. Since cost of Rs 2,000/- is still payable to the complainant so respondent is directed to collect the demand drafts from the office/concerned law associate and to pay Rs 2,000/- to each of the complainant either by DD or any other mode and shall file proof of said payment in registry.

#### **H. DIRECTIONS OF THE AUTHORITY**

22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest calculated in para no. 18 to the respective complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest calculated in para no. 18 shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.
- (ii) Respondent is directed to offer possession to the respective complainant within 45 days of receipt of Occupation Certificate.
- (iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.





(iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

23. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
NADIM AKHTAR  
[MEMBER]

  
PARNEET S. SACHDEV  
[CHAIRMAN]